84-1754

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ALEXANDER L. STEVAS,
CLERK

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

ROBERT D. CAVANAGH

Petitioner

V

WILLIAM GOLDBERG, et al

Respondents

PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

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QUESTIONS PRESENTED

1. Where the only issues judicially acted upon and decided by the Rhode Island Family Court were (1) the granting of a divorce ab initio to the husband and (2) the granting of the putative wife's petition to partition real property held as tenants by the entirety, is the husband precluded from instituting a civil rights suit in federal district court under 42 U.S.C., Section 1983, against the family court judge and the putative wife challenging the common law doctrine that, upon dissolution of a marriage, a wife, but not a husband, is presumed to have acquired a one-half interest in the jointly held real property even though she furnished no contribution to its acquisition and improvement?

2. Does the state family court have concurrent jurisdiction over 42 U.S.C. 1983 actions when the jurisdiction of said court

is limited to that conferred under state statute?

3. Do federal district courts have jurisdiction over a general challenge to the judge-made rule that a husband, purchasing real property as joint tenant with his wife, is presumed to have made a gift to her of a one-half interest in said property?

PARTIES TO PROCEEDING

The parties to the proceedings in both the District Court and the First Circuit Court of Appeals were the petitioner, Robert D. Cavanagh, and the respondents, Judge William Goldberg of the Newport, Rhode Island Family Court and Violet Cavanagh, putative wife of Robert Cavanagh.

Matthew Callaghan and Alfred Factor, appointed by the Family Court as commissioners in the partition proceedings were also named defendants in the District Court. Summary Judgment - Fed. R. Civ. P. 56 - was granted in their favor and no appeal was taken from this ruling.

Brian Cunha, Violet Cavanagh's lawyer in the partition proceedings was also named defendant. Cunha was also the holder of an undisclosed twenty percent interest in Cedar Grove Realty Trust which submitted the highest bid for the partitioned property.

Arthur Murphy, settlor of, and trustee for, Cedar Grove was also named defendant in the District Court as was Allan Dreschner who took title to the property from the commissioners as trustee for a second realty trust. Cunha, Murphy and Drescher were later dropped as defendants (without prejudice) when the District Court allowed Robert Cavanagh's motion to dismiss pursuant to Fed. R. Civ. P. 41(a).

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OPINIONS BELOW

The opinions of the Court of Appeals and of the District Court are unreported and appear in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the First Circuit was entered on February 1, 1985 and this petition for certiorari was timely filed. This Court's jurisdiction is invoked under 28 U.S.C., Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment to the Constitution, Title 42 U.S.C., Section 1983, and Rhode Island General Law, Section 8-10-3 appearing in the Appendix hereto.

STATEMENT OF THE CASE

Petitioner, Robert Cavanagh, instituted a civil rights action in the United States District Court for the District of Rhode Island to vindicate the deprivation of his

constitutional rights under the Fourteenth Amendment to the Constitution and Section 1983 of Title 42 of the United States Code. The jurisdiction of the District Court was invoked pursuant to 28 U.S.C., Sections 1331(a) and 1343(3).

Count I of the Complaint was directed against the respondents — Judge William Goldberg of the Rhode Island Family Court and Violet Cavanagh, putative wife of the petitioner.

The thrust of Count I is that the judge-made doctrine that, upon dissolution of a marriage, a wife is entitled to a one-half interest in any real property where title is taken jointly in the names of both husband and wife cannot pass constitutional muster in our modern society. See Orr v Orr, 440 U.S. 268 (1979)(statute providing alimony for wife only unconstitutional). Under this doctrine a husband is presumed to have gifted his wife with this one-half interest merely because he elected to take title as joint tenants or as

tenants by the entirety and despite the fact that the wife made no contribution to the property's acquisition.

This presumption of a gift doctrine was founded upon the legal obligation of a husband to support his wife. Oldham v Oldham, 58 R.I. 268, 192 A. 758, 762 (1937). Other states adhere to this same doctrine. See Wright v Wright, 242 Ill. 71, 89 N.E. 789, 791 (1909). Sweetman v Sweetman, 115 N.H. 80, 333 A.2d 456 91975). But, however, since a wife had no legal obligation to support her husband, a like presumption did not arise if she alone provided the funds to purchase realty held as joint tenants. Wright v Wright, 89 N.E. at 791-92. Sweetman v Sweetman, 115 N.H. at 82 (divorcing husband carried the burden of proof that wife intended an absolute gift of a one-half interest in jointly held realty purchased with her funds).

Petitioner, Robert Cavanagh ("Robert"), then a citizen of Massachusetts, first met the respondent, Violet (Bennett) Cavanagh ("Violet") in Florida while serving in the Navy. They

married in Rhode Island in 1954 following Robert's discharge from the Navy. At the time of said ceremony, Violet averred that she had never previously been married. Following this marriage, the Cavanaghs were domiciled in Massachusetts and New Jersey until 1962 when they moved to Rhode Island when Robert accepted employment with the United States Naval Underwater Systems Center.

On or about May 28, 1963, the Cavanaghs, as tenants by the entirety, purchased a fifty acre parcel (with buildings) located in Little Compton, Rhode Island.

In early December of 1971, the Cavanaghs separated and Violet filed an action for divorce in the Rhode Island Family Court. Robert subsequently discovered that Violet, in fact, had previously wed at least three other men and that two of her prior marriages had never been legally dissolved. Robert next filed motions to dismiss Violet's divorce action. The Family Court, dispite unrebutted

documentary evidence that Violet had no right to maintain a divorce action, refused to dismiss her suit. The Family Court (respondent Judge Goldberg) also coerced Robert into cross-filing for a divorce ab initio which was subsequently granted because Violet did indeed have another lawful husband still living.

During the course of the Family Court proceedings, Violet filed a petition to partition the jointly held Little Compton property. The Family Court ruled that Violet held a one-half interest in said property and ordered it sold.

In February of 1981, the Family Court accepted a bid of $336,000.00 for the property which had an appraised fair market value of $605,000.00.

On April 10, a deed was recorded showing a conveyance by the Family Court Commissioners to the high bidder.[1/]

On July 2, 1985, petitioner (pro se) filed the instant suit in the United States District Court for the District of Rhode Island. praying, inter alia, that the "presumption of a gift"doctrine be declared unconstitutional under both the Due Process and Equal Protection

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1/ In January of 1984, Petitioner filed a Complaint for Annulment in the Massachusetts Probate & Family Court and recorded a Lis Pendens referencing the same. This suit was dismissed, without prejudice, since Massachusetts, by statute, requires domicile there both when the foreign marriage was soleminized and when the annulment action is commenced. An appeal was taken from this dismissal to the Massachusetts Appeals Court. On February 20, 1985, the Massachusetts Supreme Judicial Court, sua sponte, transferred this appeal to its own docket where it is now pending.

Petitioner is contending that the requirement that he also be domiciled in Massachusetts in order to sue for annulment is unconstitutional since it infringes upon his right to freely travel interstate and serves no state interest.

Massachusetts also requires that a divorce action must be dismissed if a legal marriage is not proven. Norcross v Norcross, 155 Mass. 425 (1892). Massachusetts also follows the general rule that a "presumption of gift does not arise when the transferee is not legally married to the purchaser, even though they lived together as husband and wife". Bohaker v Koudelka, 333 Mass. 139, 142 (1955). See also McGean v McGean, 339 A.2d 384, 388 (D.C. App. 1975)

Clauses of the Fourteenth Amendment and for a declaration that Violet Cavanagh had no interest in the Little Compton property.

On August 15, 1985, the District Court allowed the motion to dismiss of respondent Judge Goldberg on the grounds (1) that the action was preclude under res judicata principles, and, (2) that a district court does not directly review decisions of state appellate courts.

On August 31, 1985, the District Court granted petitioner's motion for an enlargement of time to repond to defendants' various motions and also granted permission to file a motion for reconsideration of the August 15th dismissal as to Judge Goldberg.

On September 16, 1985, the District Court reaffirmed the dismissal as to Goldberg and also allowed the motion to dismiss filed by Violet Cavanagh. On February 1, 1985, the First Circuit Court of Appeals summarily affirmed the decision of the District Court.

REASONS FOR GRANTING THE WRIT

PETITIONER HAS PROPERLY INVOKED FEDERAL JURISDICTION FOR HIS CONSTITUTIONAL CHALLENGE AND HIS CLAIM IS NOT BARRED UNDER PRECLUSION PRINCIPLES

The District Court is of the view that petitioner should have raised his claims under 42 U.S.C., Section 1983 in the state judicial proceedings, citing Migra v Warren City School Dist. Bd. of Educ., ___ U.S. ___, 104 S.Ct. 892 (1984), as authority.

Migra holds that a Section 1983 litigant cannot pursue his state claims in state court while, at the same time, preserve his federal claims for later adjudication in a federal court. ___U.S. at ___, 104 S.Ct. at 898.

Migra also states that "a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered". ___ U.S. at ___, 104 S.Ct. at 896.

Under Rhode Island law, the doctrine of

res judicata requires (1) identity of parties, (2) identity of issues, (3) identity of claims for relief, and (4) finality of judgment. Estate of Basset v Stone, 458 A.2d 1078, 1080 (R.I. 1983). Res judicata does not come into play if "there is a diversity of parties and issues". Gnys v Amica Mut. Ins. Co., 396 A.2d 107, 110 (R.I. 1979). In the case at bar, at a minimun, there is both diversity of parties and diversity of issues. Respondent Goldberg was obviously not a party in the state proceedings. And the constitutional claim presented to the federal court was not a viable issue prior to the start of the state proceedings.

Moreover, unlike Dr. Migra, petitioner was not in an "offensive posture" when he was first dragged into Family Court. See, generally, Allen v McCurry, 449 U.S. 90 (1980)(Blackmun, J., dissenting).

The Family Court refused to dismiss the divorce action of petitioner' putative wife, dispite concrete evidence that there was no valid marriage to dissolve. What then were

his options, if any, to obtain initial review of his federal claim in a federal forum?

Court he have removed the divorce action to federal court? Diversity of citizenship was lacking so he could not utilize 28 U.S.C., Section 1441. And removal under 28 U.S.C., Section 1443 has been limited by this Court to only those defendants in state courts who assert race discrimination. Georgia v Rachel, 384 U.S. 780 (1966).

Perhaps petitioner, instead of knuckling under to Judge Goldberg' coercion, should have commenced an action in federal court. But federal courts lack jurisdiction over family dissolution proceedings. Barber v Barber, 62(21 How) U.S. 582, 584 (1859). Even if petitioner somehow was able to convince a federal court to abstain on the dissolution issue under Railroad Com'r. v Pullman Co., 312 U.S. 496 (1941) — thus preserving his right to return there later under the procedure set forth in England v Louisiana State Board of Medical Examiners, 375 U.S. 411(1964)—

would not the district court likely conclude that the abstention doctrine established in Younger v Harris, 401 U.S. 37 (1971) prevented this approach because there was an on-going state proceeding. See Merrick v Merrick, 441 F.Supp. 143, 147 (SD N.Y. 1977).

Dr. Migra was vested with freedom of choice. She elected to forgo a federal forum and filed her suit in state court but without raising her federal claims. Petitioner, however, did not enjoy this same luxury. He was hauled into state court against his will and held there in bondage until he submitted to judicial blackmail that effectively gave Violet that which she could not legally obtain on her own claim.

To construe Migra as precluding federal relief is, under the circumstances of this case, an erosion of the purpose and function of Section 1983.

PETITIONER DID NOT HAVE A FULL AND FAIR OPPORTUNITY TO PRESENT HIS CONSTITUTIONAL CLAIMS TO STATE COURTS

Assuming arguendo that petitioner should have presented his federal claims to the state courts, inquiry must still be made as to whether "state substantive law was facially unconstitutional" or whether "state procedural law was inadequate to allow full litigation of a constitutional claim". Allen v McCurry, supra, 449 U.S. at 100-01, quoting from Monroe v Pape, 365 U.S. at 173-4. Both of the recited factors are present in the case at bar.

First, it is clear that the presumption of a gift doctrine — on its face — cannot withstand scrutiny under the principles established by this Court in cases like Orr v Orr, supra. Like the alimony statute in Orr, the common law rule challenged in the instant case discriminates on the basis of sex and cannot pass constitutional muster.

Secondly, there are no adequate state procedures that provided and opportunity for "full and fair" litigation of petitioner's claims. The Rhode Island Family Court is a court of limited jurisdiction. Concannon v Concannon, 116 R.I. 323, 356 A.2d 487, 491 (1976). Its power "to act in a given situation must be expressly conferred by statute". Richtmyer v Ritchtmyer, 461 A.2d 409, 411 (R.I. 1980).[2/] Petitioner was the defendant in the state proceedings. However, in order for him to raise his Section 1983 claims the state proceedings would have to be, not in the Family Court, but, rather, in the Superior Court, the "trial court of general jurisdiction". Borozny v Paine, 411 A.2d 304, 307 (R.I. 1980). Compare, Lovely v Laliberte, 498 F.2d 1261 (1st Cir. 1974; cert. denied 419 U.S. 1038 (1974)). Lovely was the defendant in a suit in state district court. He elected a trial de novo in state superior court but did not raise his federal claims

2/ Rhode Island Gen. Laws, Section 8-10-3

in superior court. The First Circuit held that Lovely's subsequent federal suit was precluded since he had the opportunity to raise his federal claims in the superior court.

Petitioner, like Lovely, was a defendant in an inferior state court. However, unlike Lovely, he was never in a state trial court competent to hear claims under Section 1983.

At page 1 of his August 15, 1984 Memorandum & Order, the District Court judge correctly notes that various aspects of the Cavanagh dispute "have been adjudicated by the state supreme court on no less than four occasions". But the constitutional claims raised by the instant case were never presented to the Rhode Island Supreme Court. Even if petitioner had attempted to present them to the state supreme court, his contentions would have fallen upon deaf ears for the state supreme court will not entertain constitutional issues mot raised in the trial court. Town of Foster v Lamphere, 117 R.I. 541, 545, 368 A.2d

1238 (1977). Greenwood v Rahill, 412 A.2d 228, 230 (R.I. 1980).

Petitioner has elected to climb the federal tree for his first bite of the apple. And his ladder is not long enough for him to bite into state owned apples.

THE DISTRICT COURT HAS JURISDICTION OVER PETITIONER'S GENERAL CONSTITUTIONAL CHALLENGE TO A JUDGE-MADE RULE

Citing District of Columbia Court of Appeals v Feldman, 460 U.S. 462 (1983), as authority, the District Court held that it could not "ignore the Feldman rule and peek behind the pronouncements of the Rhode Island Supreme Court". Memorandum & Order, p. 3. But the District Court misconstrues the principle enunciated in Feldman and its application to the instant case.

Feldman expressly holds that a federal district court has jurisdiction "over general challenges to state bar rules, promulgated in nonjudicial proceedings, which do not require

review of a final state-court judgment in a particular case". 460 U.S. at 486.

While the rule challenged in the case at bar was promulgated long ago in some common law proceeding, this distinction should not be of importance. In the instant case the District Court need not inquire into the particular factual circumstances of the Family Court proceedings, nor any subsequent appellate review; it need only examine the challenged rule as promulgated, and as construed by case law.

In McCarty v McCarty, 453 U.S. 210 (1981), this Court held that states could not treat the retirement pay of divorced military personnel as community property. Following McCarty, the California federal district courts were flooded with suits by divorced husbands seeking declaratory judgments that their former wives were no longer entitled to a portion of their military retirement pay. Armstrong v Armstrong, 696 F.2d 1237 (9th Cir 1983; cert. denied, ___U.S.___, 104 S.Ct. 337, 1983).

White v White, 731 F.2d 1440 (9th Cir. 1984). Whittington v Whittington, 733 F.2d 620 (9th Cir. 1984). The Ninth Circuit affirmed the district court's dismissals for lack of federal question jurisdiction (28 U.S.C., s. 1331) in Armstrong and Whittington. But White had also invoked federal jurisdiction under 28 U.S.C., s. 1343 and 42 U.S.C., s. 1983. The district court had also dismissed White's suit for lack of subject matter jurisdiction. The Ninth Circuit affirmed because White was not entitled to any relief since McCarty was not retroactive. But the Court of Appeals held that the district court "erred in dismissing the section 1983 claim for lack of jurisdiction", stating, 731 F.2d at 1442 (citation omitted):

> "District courts have subject matter jurisdiction over suits brought under section 1983 even when the state action allegedly violating plaintiff's federally protected rights take the form of state court proceedings."

White sought relief in federal court for what he mistakenly thought was a violation of federal law by a state divorce court. In the

case at bar petitioner seeks redress in a federal forum for deprivation of his constitutional rights by a state divorce court. Since he is not seeking "particularized" review of any state court judgment, Feldman mandates federal court jurisdiction over his general challenge to the "presumption of gift" rule.

CONCLUSION

Mitchum v Foster, 407 U.S. 225, 240-242 (1972) established that Section 1983 was enacted to provide a federal forum against state infringement upon federally protected rights, including infringement by the judicial branch of state government. The decision below in the case at bar, if left standing, will drain Mitchum of its vitality. Accordingly, a writ of certiorari should issue to review the judgment of the First Circuit Court of Appeals

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 84-1872

ROBERT D. CAVANAGH
Plaintiff, Appellant

v.

WILLIAM GOLDBERG, ET AL.,
Defendants, Appellees.

Before
Breyer, Circuit Judge,
Aldrich, Senior Circuit Judge,
and Torruella, Circuit Judge.

ORDER OF COURT

Entered February 1 , 1985

Having reviewed the record and briefs in this case, we agree with the conclusion of the district court and summarily affirm its judgment. 1st Cir. R. 12.

By the Court:

FRANCIS P. SCIGLIANO,
Clerk

By: Richard W. Gordon
Chief Deputy Clerk

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF RHODE ISLAND

ROBERT D. CAVANAGH
Plaintiff

v

C.A. NO. 84-0338 S

WILLIAM GOLDBERG, et al,
Defendants.

MEMORANDUM & ORDER

This is the latest installment of a much-litigated saga involving the putative marriage between the plaintiff, Robert D. Cavanagh, and his once and former wife (or not), the defendant Violet Cavanagh. The first chapter of the litigation occurred when Violet filed a petition for divorce against Robert in the Rhode Island Family Court on or about December 13, 1971. Plaintiff's Complaint, P.15. Since that time, various elements of the dispute have been adjudicated by the state supreme court on no less than four occasions. See Cavanagh v Cavanagh, 315 A.2d 757 (R.I. 1974); Cavanagh v Cavanagh, 375 A.2d 911 (R.I. 1977); Cavanagh v Cavanagh, 380 A.2d 964 (R.I. 1977); Cavanagh v Cavanagh, 468

A.2d 286 (R.I. 1983). And, according to plaintiff's pleadings herein, he has recently extended the reach of his litigiousness to the courts of the Commonwealth of Massachusetts. E.g., Plaintiff's Complaint, P.48; id., P.51.

The instant action was brought in this court on June 30, 1984. It is premised on federal question jurisdiction, essentially under 28 U.S.C. SS 1331 and 1343(3). The defendants (in addition to Violet) include the family court judge who presided in the state court matrimonial proceedings (Hon. William Goldberg), Robert's former lawyers (Matthew F. Callaghan and Alfred Factor), an attorney who at one time represented Biolet (Brian Cunha), and the trustees of two realty trusts (Messrs. Murphy and Drescher, respectively) which were allegedly involved in the bidding for a valuable parcel of real estate owned by Robert and Violet during their supposed marriage. The realty was apparently sold and conveyed by a commissioners' deed in a pro-

ceeding supervised by, and anci lary to the domestic litigation in, the state family court.

The complaint is in three counts. In his first statement of claim, Robert seeks a declaration (i) that Violet has no interest in the realty in question (and presumably, in the proceeds of the sale), and (ii) that a state evidentiary doctrine employed by the Rhode Island courts in the state proceedings deprived him of his rights under the fourteenth amendment to the U. S. Constitution. The second statement of claim alleges that the three lawyers named above, along with the two trustees, "acting under color of law. . .have deprived plaintiff of his Civil and Constitution (sic) rights and deprived plaintiff of his property in violation of 42 U.S.C. S 1983." Plaintiff's Complaint, P.57. Robert's third and final thrust is a pendent state law claim for negligence, in the nature of attorney malpractice, against Callaghan and Factor.

Judge Goldberg has moved to dismiss the complaint against him pursuant to Fed. R. Civ.

P. 12(b)(1) and 12(b)(6); and Robert's former lawyers have each moved for summary judgment under Fed. R. Civ. P. 56. Robert has not seasonably objected to any of these motions, and the time for doing so has expired. Accordingly, both motions can and should be granted on that ground alone. See Local Rules 12 and 12.1 of this court. Inasmuch as Robert appears pro se, however, the court has gone the extra mile and has devoted especial scrutiny to the motions, out of an abundance of caution. The results of this perscrutation serve merly to bolster the conclusion that the defendants in question are entitled to be dispatched from these proceedings.

As to Judge Goldberg, only count one of the complaint is addressed to him. The plaintiff had a full and fair opportunity to litigate the competing claims to the real estate in the state courts, and all of Robert's arguments anent count one were (or could have been) raised there. This court does not, of course, sit in direct review of the decisions of state

appellate tribunals. D.C. Court of Appeals v Feldman, 103 S. Ct. 1303 (1983). Robert's first count, if entertained, would demand that this court ignore the Feldman rule, and peek behind the pronouncements of the Rhode Island Supreme Court. the plaintiff's claim in this regard is, accordingly, barred by familiar doctrines of full faith and credit and res judicata.[1] E.g., Migra v Warren City School District Board of Education, 104 S. Ct. 892 (1984); Isaac v Schwartz, 706 F.2d 15, 16-17 (1st Cir. 1983); Gonsalves v Alpine Country Club, 563 F. Supp. 1283, 1285-86 (D.R.I. 19830, add'd 727 F.2d 27 (1st Cir. 1984).

Callaghan and Factor are named in the second count of the complaint. Because they

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[1]Thus it is unnecessary for this court to reach the related questions of (i) whether Judge Goldberg is a property party defendant in an assult on the constutionality of a state rule of law, (ii) whether prudential considerations of comity and the like require this court to eschew passing upon Cavanagh's contentions, and (iii) the effect of the judge's claim of absolute judicial immunity.

were not parties to the state court litigation and because the overall claim purportedly framed by count two was not before the state courts as such, they may not be able to embrace the benefit of res judicata (claim preclusion). But, in any event, collateral estoppel (issue preclusion) looms large. The court need not, however, tarry on this question. More to the point, no conspiracy to deprive Robert of his civil rights is alleged under 42 U.S.C. S 1985(3). And, under 42 U.S.C. S 1983, if the plaintiff sues the defendants named in this count as private attorneys,[2] there is no "state actor" present sufficient to invoke the anodyne of 42 U.S.C. S 1983 (none of the other second count defendants being govermental officials or otherwise invested with the requisite trappings of state action). And conversely, if Calla-

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[2]The complaint, which is generally discursive, is non-specific as to the capacity in which Callaghan and Factor have been haled into court on count two.

ghan and Factor are sued as co-commissioners, and are viewed as state actors in that capacity, but cf. Polk County v Dodson, 454 U.S. 312 (1981), they would, on the filings of record (include attorney Paul Russo's unrebutted affidavit and the exhibits annexed thereto), be entitled to the prophylaxsis of qualified immunity. Harlow v Fitzgerald, 457 U.S. 800, 813-19 (1982). Indeed, the complaint itself does not allege that these defendants knew of Cunha's beneficial interest in the Cedar Grove Realty Trust, nor does it indicate how such an interest (or knowledge thereof) would have made a difference. For aught that appears, the co-commissioners acted squarely within the encincture of specific decrees of a court of competent jurisdiction.

Lastly as to the second count, the law is well settled in this circuit that, in a discrimination action, a plaintiff must plead facts which, if proven, would entitle him to relief. E.g., Sandler v Easter Airlines,

Inc., 649 F.2d 19, 20 (1st Cir. 1981; Fisher v Flynn, 598 F.2d 663, 665 (1st Cir. 1979); Black v Brown University, 555 F. Supp. 880, 886 (D.R.I. 1983). See also O'Shea v Littleton, 414 U.S. 488, 497 (1974). Here, as in Black, 555 F. Supp. at 886, the count in question "is little more than a litany of unsupported conclusions and wholly subjective characterizations...". Because it lacks a minimally sufficient factual predicate, it cannot stand.

Since count two of the complaint fails to present any genuine issue of material fact vis-a-vis the attorney movants, and since they are entitled to judgment thereon as a matter of law, this court has no jurisdiction to adjudicate the state law malpractice claim against them.[3] See Aldinger v Howard, 427 U.S. 1 (1976). Clark v Taylor, 710 F.2d 4,

[3]No claim is made against Callaghan and Factor in the first count. Thus, with the disposition of the second statement of claim as to them, both become pendent parties.

11-13 (1st Cir. 1983).

For all of the foregoing reasons, count one of the complaint is dismissed with prejudice as to the defendant Goldberg (and since he is not named in any other count, he is dismissed from the action); the motion of the defendants Callaghan and Factor for brevis disposition of count two of the complaint in their favor is granted; and count three of the complaint is dismissed without prejudice for want of jurisdiction (and, inasmuch as there are no remaining claims against either of these defendants, they are dismissed from this action).

So ordered.

/s/ Bruce M. Selya
United States District Judge

August 15, 1984

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ROBERT D. CAVANAGH

v

WILLIAM GOLDBERG ET ALS CA 84-0338 S

ORDER

By slip opinion filed on August 15, 1984, the court granted certain motions (no objection appearing) and dismissed the defendants Goldberg, Callaghan and Factor from this action. The remaining defendants (Violet Cavanagh, Cunha, Murphy and Drescher have now filed various dispositive motions. The plaintiff, allegedly in search of counsel, has requested an enlargement of time to respond to the last-mentioned group of motions. While the court's decision on the Goldberg-Callaghan-Factor motions would appear to be dispositive of the remaining motions as well, the court is conscious of the deference due to a pro se suitor. Accordingly, the plaintiff's motion is granted in part. The plaintiff shall have

until September 13, 1984 to file memoranda in in opposition to the pending motions of defendants Violet Cavanagh, Cunha, Murphy and Drescher; and those motions are hereby set for oral argument and bench decision on Monday, September 17, 1984 at 8:30 a.m. Further, although the court will not recall its prior orders granting relief to the defendants Goldberg, Callaghan and Factor, the plaintiff may, on or before September 10, 1984, move to reconsider these orders; and, if any such motion is filed, the same will likewise be heard on September 17. So ordered.

ENTER:

/s/ Bruce M. Selya
United States District Judge

August 31, 1984

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

ROBERT D. CAVANAGH
Plaintiff

NO. 84-0338 S

V

WILLIAM GOLDBERG, ET AL
Defendants

MOTION TO DISMISS

Now comes the plaintiff, Robert Cavanagh, and moves, pursuant to F.R. Civ.P.-Rule 41(a), that this Court dismiss Brian R. Cunha, Arthur S. Murphy and Allen J. Drescher as defendants in the above entitled action.

For the plaintiff

/s/ Robert D. Cavanagh
pro se
44 Morton Avenue
P.O. Box 4564
Newport, R.I.

September 10, 1984

ORDER (9-17-84)

Heard in open court. Motion to dismiss granted pursuant to Rule 41(a) and case discontinued without prejudice as to defendants Cunha, Murphy and Drescher. Dismissal as to defendants Factor,

Callaghan and Goldberg reaffirmed (see Memorandum and Order of Aug. 15, 1984). Motion to dismiss of defendant Violet Cavanagh is granted for essentially the same reasons. Plaintiff's oral motion for a temporary restraining order is denied as there is no likelihood of success on the merits. So ordered

/s/ Bruce M. Selya
USFJ

JUDGMENT IN A CIVIL CASE

UNITED STATES DISTRICT COURT
RHODE ISLAND

ROBERT D. CAVANAGH CA 84-0338 S

V

WILLIAM GOLDBERG, et al

IT IS ORDERED AND ADJUDGED

JUDGMENT SHALL ENTER IN FAVOR OF ALL DEFENDANTS PRESENTLY BEFORE THE COURT (i.e., GOLDBERG, VIOLET CAVANAGH, CALLAGHAN and FACTOR) FOR COSTS AS PER THE ORDERS OF AUGUST 31, 1984 and SEPTEMBER 17, 1984 RESPECTIVELY

/s/ Lisa J. Horton
Deputy Clerk

September 17, 1984

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws

42 U.S.C., Section 1983

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law,

suit in equity, or other proper proceeding for redress

Rhode Island General Laws, Section 8-10-3

"8-10-3. Establishment of court—Jurisdiction—Seal —Oaths.—There is hereby established a family court, consisting of a chief judge and four (4) associate justices, to hear and determine all petitions for divorce from the bond of marriage and from bed and board; all motions for allowance, alimony, support and custody of children, allowance of counsel and witness fees, and other matters including all petitions and motions relative to real and personal property in aid thereof affecting the parties and children wherein jurisdiction is acquired by the court by the filing of such petitions for divorce; separate maintenance; complaints for support of parents and children; those matters relating to delinquent, wayward, dependent, neglected or mentally defective or mentally disordered children; adoption of children under eighteen (18) years of age; paternity of children born out of wedlock and provision for the support and disposition of such children or their mothers; child marriages; those matters referred to the court in accordance with the provisions of section 14-1-28; those matters relating to adults who shall be involved with paternity of children born out of wedlock; responsibility for or contributing to the delinquency, waywardness or neglect of children under sixteen (16) years of age; desertion, abandonment or failure to provide subsistence for any children dependent upon such adults for support; neglect to send any child to school as required by law; bastardy proceedings, and custody of children in proceedings, whether or not supported by petitions for divorce or separate maintenance or for relief without commencement of divorce proceedings.

The family court shall be a court of record and shall have a seal which shall contain such words and device as the court shall adopt. The judges and clerk of the family court shall have power to administer oaths and affirmations.